

Basis Statement

On June 21, 2012, a Citizen Petition to Initiate Rulemaking concerning 06-096 C.M.R. ch. 882, *Designation of Bisphenol A as a Priority Chemical and Regulation of Bisphenol A in Children's Products*, was submitted to the Board of Environmental Protection (Board). The petition sought to extend the existing prohibition on the sale of reusable food and beverage containers containing bisphenol-A (BPA) to packaging used for infant formula, baby food, and toddler food. In addition the petition sought the adoption of a modified definition for "intentionally added," and adoption of a definition for the term "toddler food."

Under 38 M.R.S.A. § 1696, the Board has the authority to adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing BPA, and such a prohibition would be a major substantive rule. Therefore, the petition's proposed ban on packaging used for infant formula, baby food and toddler food falls within the Board's jurisdiction. The remaining language changes proposed in the petition call for routine technical rulemaking, which is the responsibility of the Commissioner of the Department of Environmental Protection (Commissioner).

A joint public hearing before the Board and Commissioner on this petition was held on September 6, 2012. Notice of this hearing was posted on August 15, 2012. The public comment period closed on September 28, 2012. Four deliberative sessions were held prior to action by the Board and Commissioner.

On January 24, 2013, the Board voted to provisionally adopt a sales prohibition on infant formula and baby food packaging containing intentionally added bisphenol A in an amount greater than a de minimis level, because evidence in the record showed that children under three years of age who consume infant formula and baby food from packaging containing bisphenol A are exposed to the priority chemical, and that there are safer alternatives available at comparable costs.

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The Board voted not to adopt a rule prohibiting the sale of toddler food packaging containing intentionally added bisphenol A because the record remained unclear what products would be considered intentionally marketed to, or intended for the use of children under three years of age.

The Commissioner did not adopt the proposed definition for toddler food because at this time it is unnecessary, and the definition as proposed was not clear enough to be able to regulate toddler food. The Commissioner also did not adopt the proposed modification to the definition for "intentionally added" because the definition for this term in the current rule is consistent with the definition in statute and is sufficient for the administration of the program.

The Board modified the language proposed by the petitioners for the prohibition of infant formula and baby food packaging set forth in 06-096 C.M.R. ch. 882 § 5(A) in order to align with statutory and regulatory requirements. As set forth in more detail below, the amendments clarify that the sales prohibition is on the packaging and not the food and beverage items; the prohibition only applies to items that contain BPA in an amount greater than the de minimis level; and establishes the effective date of the sales prohibition as March 1, 2014.

The petition proposed a ban on "infant formula and baby food that is sold in a plastic container, jar or can that contains intentionally-added bisphenol A." Pursuant to 38 M.R.S.A. § 1696(1), the Board's authority to prohibit the manufacture, sale or distribution of a product containing a priority chemical extends only to a "children's product." Section 1691(7) defines "children's product" in part as a "consumer product," and Section 1691(8) excludes from the definition of "consumer product" a food or beverage. In addition, 38 M.R.S.A. § 1697(8) excludes food and beverage packaging from the regulations, except when the product is intentionally marketed or intended for the use of children under three years of age. As established in the Department's Rule, Chapter 882, §§ 1(B)(2) and 2(E), infant formula and baby food are intended for the use of children under three years of age; therefore the Board has the authority to regulate infant formula and baby food packaging, but does not have the authority to ban a food or beverage containing BPA. In order to regulate within its given authority, the Board amended the proposed rule to clarify that the ban applies to infant formula and baby food packaging. The Board replaced the words "plastic container, jar or can" as proposed by the petitioners, with the more general word

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“packaging” in order to be consistent with statute and rule (38 M.R.S.A. §§ 1691(8) and 1697(8); Chapter 882, §§ 1(B)(2) and 2(E); and Chapter 880, § 1(J)). By using the term packaging, the Board intends to include all types of packaging that are used to contain infant formula and baby food including plastic containers, jars and cans as proposed in the petition.

The Board added to the petition's proposed rule the phrase, “in an amount greater than the de minimis level,” because the Board's authority under 38 M.R.S. § 1696(1) is limited to imposing a ban on a children's product containing BPA “in an amount greater than a de minimis level.”

The Board changed the effective date for the ban on infant formula and baby food packaging from January 1, 2013 proposed in the petition to March 1, 2014. Pursuant to 38 M.R.S. § 1696(1), the effective date of a prohibition may not be sooner than 12 months after notice of the proposed rule is published. The petition language was posted for public comment on August 15, 2012, and so the earliest effective date for the prohibition would be August 15, 2013. The Board decided on a later date, March 1, 2014, for several reasons. First, Section 5(B) of Chapter 882 requires that manufacturers of products subject to the sales prohibitions in Section 5(A) must file, or cause their distributors to file, a compliance plan with DEP no later than 180 days prior to the effective date of the sales prohibition. Manufacturers and distributors will need time to develop compliance plans which will be due 180 days before the effective date of the prohibition. Second, the Board's rulemaking is major substantive and the provisionally adopted rule will require legislative review. Therefore, it is likely that any final rule will not be adopted by the Board for several months.

The Commissioner changed the proposed language in 06-096 C.M.R. ch. 882 § 5(B) of the petition to not specifically list the individual children's product categories for which compliance plans must be submitted. The provision in Chapter 882, § 5(B) is routine technical and any changes would become effective before the major substantive portion in Chapter 882, § 5(A), which must be approved by the Legislature and finally adopted by the Board before becoming effective. To avoid a possible conflict, the Commissioner replaced the individual categories listed in Chapter 882, § 5(B) (including the reusable food or beverage containers banned in the current rule) with the term “children's product” so that whichever children's products are subject

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to the sales prohibition of Chapter 882, § 5(A), those children's products will be subject to the compliance requirement.

On June 4, 2013, Resolves 2013, ch. 44 was enacted authorizing final adoption of the rule provisionally adopted by the Board on January 24, 2013. On July 18, 2013, the Board finally adopted the rule which prohibits the sale, after March 1, 2014, of infant formula and baby food packaging containing intentionally-added bisphenol A in an amount greater than the de minimis level.

Comments on the rulemaking proposed in the petition are summarized below, are grouped according to subject matter, and may be consolidated. Responses follow the comments.

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| | (225) Charlotte Hollenberg, Union |
| | (226) Cheryl Denis, Portland |
| | (227) Cheryl White, Belfast |
| | (228) Christina Aklaros Pritham,
Greenville Jct. |
| | (229) Christopher Sewall, Phippsburg |
| | (230) Colleen McKenna, Brunswick |
| | (231) Connie Hanson, Augusta |
| | (232) Connie Williams, Kittery |
| | (233) Corliss Davis, Belfast |
| | (234) Cynthia L. Simon, Gorham |
| | (235) Deborah McCarthy, Phillips |
| | (236) Dennis Morton, Gorham |
| | (237) Derek K. Markgren, Portland |
| | (238) Destry Oldham-Sibley,
South Portland |
| | (239) Diane Schetky, Topsham |
| | (240) Diane Schyberg, Boothbay |

Supplemental Basis Statement
 Citizen Initiated Petition to Amend Rule Chapter 882
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 Regulation of Bisphenol A in Children's Products

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|--|---------------------------------------|
| (241) Dianne Stevenson, Lincolnville | (284) Jennifer Angelone, Portland |
| (242) Dianne Williams, Falmouth | (285) Jewel B. Suchecki, Scarborough |
| (243) Dominick A. Rizzo, Portland | (286) Jim A. Dorsky, Appleton |
| (244) Earle Kasregis, Roxbury | (287) Joan Federman, Stockton Springs |
| (245) Edward S. Riggs, Albion | (288) Joanne C. Morse, Waterford |
| (246) Eileen Whynot, Gorham | (289) Joanne Dunlap, Rangeley |
| (247) Elaine Theriault, Winthrop | (290) Joel Pelletier, Portland |
| (248) Eleanor H. Lacombe, Hope | (291) John Halloran, Orono |
| (249) Elizabeth A. Smith, Stockton Springs | (292) John Neal, Greene |
| (250) Elizabeth Cameron, Cape Elizabeth | (293) John P. Grillo, Orono |
| (251) Elizabeth Jackson, Robbinston | (294) Joseph Cerny, South Windham |
| (252) Elizabeth McPherson, Damariscotta | (295) Joshua Parda, Eddington |
| (253) Elizabeth Peary, South Portland | (296) Jotham Trafton, Topsham |
| (254) Elizabeth Pierson, Brunswick | (297) Joyce A. Polyniak, Damariscotta |
| (255) Ellen Wolf, Kennebunk | (298) Judy Berk, Northport |
| (256) Ellen Zimmerman, South Portland | (299) Judy Curtis, Gorham |
| (257) Ellis Pepper, Montross | (300) Julie B. Carter, Scarborough |
| (258) Emmie Theberge, Hallowell | (301) Julie Weaver, Mt. Vernon |
| (259) Erik Missal, Woolwich | (302) Justin Walton, South Gardiner |
| (260) Faith Freewoman, Beth | (303) Kaitlyn Bernard, Waterville |
| (261) Felice J. Rubin, Buxton | (304) Karen F. Wiltshire, Round Pond |
| (262) Flo Wilder, Hancock | (305) Karen Fletcher, Freeport |
| (263) Frank Dehler, Cape Neddick | (306) Karen Jelenfy, Washington |
| (264) Frank P. Morin, Augusta | (307) Karen L. Curtis, Gorham |
| (265) Frank Russell, Starks | (308) Karen L. Tobias, Vassalboro |
| (266) Gabrielle G. Rigaud, Jefferson | (309) Karen Robbins, Arrowsic |
| (267) Harold A. McWilliams, Gorham | (310) Kate Bauman, Jefferson |
| (268) Heather Omand, Greenbush | (311) Kate Harris, Belfast |
| (269) Howard Bliss, Brunswick | (312) Katherine Richman, Appleton |
| (270) Hugh Freund, South Freeport | (313) Kathleen A. Remmel, Portland |
| (271) Jamie Moore, Portland | (314) Kathryn A. Young, Damariscotta |
| (272) Jane Davis, Wayne | (315) Kent A. Price, Orland |
| (273) Jane F. Powell, Camden | (316) Kevin S. O'Kendley, Winterport |
| (274) Jane G. Cutter, Scarborough | (317) Kristin Dennison, Montville |
| (275) Jane Yurko, Freeport | (318) Laura Sholtz, Exeter |
| (276) Janet Berard Doyle, Raymond | (319) Len Clarke, Port Clyde |
| (277) Janet Lagassee, Auburn | (320) Leonard R. Duffy, Newcastle |
| (278) Janet Martucci, Washington | (321) Leslie Burhoe, Wayne |
| (279) Janine Moore, Waterville | (322) Leslie Hudson, Orono |
| (280) Jannis Weed, Gorham | (323) Linda Pankewicz, Raymond |
| (281) Jaremy P. Lynch, Harspswell | (324) Lisa DeHart, West Gardiner |
| (282) Jean O. Perkins, Phippsburg | (325) Lisa Ericson, Waterville |
| (283) Jeff M. Reynolds, Bangor | (326) Lisa M. Pohlmann, Jefferson |

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|--|---|
| (327) Lois Ann D. Winter, Portland | (368) Rebecca Stanley, Monmouth |
| (328) Lorna Cummings, Camden | (369) Rebecca Tripp, Searsport |
| (329) Lynn Davey, Portland | (370) Richard L. Bauman, Cape Elizabeth |
| (330) Lynn Swiriduk, Monroe | (371) Rick Seeley, Portland |
| (331) Lynn Tauss, Lincolnville | (372) Robert Fritsch, Dexter |
| (332) Marcia D. White, Stratton | (373) Robert G. Shafto, Falmouth |
| (333) Marian McAleenam, Rockport | (374) Robert Sewall, Belfast |
| (334) Marilyn C. McWilliams, Gorham | (375) Robert Stenger, Saint George |
| (335) Marilyn voorhies, West Tremont | (376) Roger T. Baston, Whitefield |
| (336) Marjorie Monteleon,
Southwest Harbor | (377) Ronald W. Walters
Cumberland Foreside |
| (337) Martha F. Fenno, Windham | (378) Rose L. Bloom, Scarborough |
| (338) Martha S. Goodale, Monroe | (379) Ruth F. Barrett, Bethel |
| (339) Mary Jane Welch, Rockland | (380) Sarah Gross, Portland |
| (340) Mary L. Truman, Brownville | (381) Semena Curlik, Blue Hill |
| (341) Matt Prindiville, Rockland | (382) Siri Beckman, Stonington |
| (342) Matthew Lipman, Waterville | (383) Staci Fortunato, Augusta |
| (343) Melissa Caswell, Smithfield | (384) Stacie Haines, Augusta |
| (344) Michael Angelone, Portland | (385) Steve Benson, Blue Hill |
| (345) Michael Haskell, Scarborough | (386) Steve Knight, Winthrop |
| (346) Michael Parker, Windham | (387) Steve Plumb, Nobleboro |
| (347) Michele Maley Jeffrey, Weld | (388) Sue Newlin, Deer Isle |
| (348) Michelle Moody, Topsham | (389) Suellen Jagels, Winterport |
| (349) Mitchell Webster, Bangor | (390) Susan Barbay, Wales |
| (350) Molly Foshay, Phippsburg | (391) Susan E. Swain, Portland |
| (351) Nan Bennett, South China | (392) Susan H. MacKenzie, Waterville |
| (352) Nancy Galland, Stockton Springs | (393) Susan Van Alsenoy, Wiscasset |
| (353) Nancy Hathawya, Surry | (394) Susan Weems, Brunswick |
| (354) Nancy Prince, Wilton | (395) Suzanne Dwyer, Jefferson |
| (355) Nicholas T. Bennett, Hallowell | (396) Thomas Czyz, Falmouth |
| (356) Normand V. Rodrigue, Manchester | (397) Tia Simon, Gorham |
| (357) Page A. Mead, Kittery Point | (398) Toby L. Kilgore, Westbrook |
| (358) Patrisha McLean, Camden | (399) Todd Martin, Gardiner |
| (359) Peri Tobin, Stockton Springs | (400) Veronique Vendette, Gardiner |
| (360) Peter Zack, Parsonsfield | (401) Virginia Wood, Kennebunk |
| (361) Philip Dalto, Monroe | (402) Walter L. Novey, Hallowell |
| (362) Philip Provost, Exeter | (403) Wayne Beach, Phippsburg |
| (363) Phyllis Reames, Portland | (404) Yvette Meunier, Concord, NH |
| (364) Priscilla D. Skerry, Portland | |
| (365) Priscilla F. Carothers,
Cumberland Center | (405) Susan Hillman Bourne
159 Western Ave.
Waterville, ME 04901-4631 |
| (366) Priscilla Jenkins, Winthrop | |
| (367) Rebecca Mcaleney, South Portland | |

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Regulation of Bisphenol A in Children's Products

- | | |
|--|--|
| (406) Joanne Dunlap
650 South Shore Dr
Rangeley, ME 04970 | (416) Ms. Karen Heck
7 Pleasant St
Waterville, ME 04901-7511 |
| (407) Tim McLain
85 Monument St. #1
Portland, Me 04101-4368 | (417) Ms. Christine Lomaka
76 Monument St
Portland, ME 04101-4328 |
| (408) Carla Whitehead
37 Oliver St
Bath, ME 04530-2826 | (418) Suzanne & Dr. Raymond McLain*
77 Quaker Meeting House Rd
Durham, ME 04222-5423 |
| (409) John Bernard
56 Mildred St
South Portland, ME 04101 | (419) Mrs. Donna Stimpson
841 Union St.
Bangor, ME 04401-3009 |
| (410) Marla Bottesch
Snowbound Books
PO Box 458
Norridgewock, ME 04957-0458 | (420) Mrs. Shirley Davis
64 Gardner Rd.
Orono, ME 04473-3403 |
| (411) Steven Kurtz
537 Congress St. Unit 510
Portland, ME 04101-3345 | (421) Ms. Jennifer Halm-Perazone
47 Bolton St.
Portland, ME 04102-2501 |
| (412) Susan O'brien
7 Susan Ave
Scarborough, ME 04074-9726 | (422) Mr. Chris reed
18 Casco St. Apt 36a
Portland, ME 04101-2977 |
| (413) Catherine Bevier
25 Great Meadow Lane
Fairfield, ME 04937-3198 | (423) Ms. Cynthia Howard
PO Box 19
Biddeford Pool, ME 0406-0019 |
| (414) Mr. Roger Fenn
15 McLellan St.
Brunswick, ME 04011-2523 | (424) Dr. John Bernard
56 Mildred St.
South Portland, ME 04106-2727 |
| (415) Karen O. Fletcher
14 South Freeport Rd
Freeport, ME 04032 | (425) Ms. Jennifer Angelone
20 Hillside Rd
Portland, ME 04103-2204 |
| | (426) Miss Kim Dyer
13 Garland Rd
Casco, ME 04015-3650 |

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- | | |
|--|---|
| (427) Ms Penny & Robert Morris
366 Bull Ring Rd
Denmark, ME 04022-5314 | (438) Heather Omand
881 Greenfield Rd.
Greenbush, ME 04418-3512 |
| (428) Ms. Virginia Wood
4 Wiggins Pond Ln
Kennebunk, ME 04043-6701 | (439) Margie Gilbert
611 Corinna Ctr Rd
Corinna, ME 04928-3118 |
| (429) Ms. Karen D'Andrea
5 Eagles Nest Dr
Scarborough, ME 04074-9249 | (440) Ellen Blanchard
4 Russell St
Readfield, ME 04355-3955 |
| (430) Ms. Doris Salzman
103 Seaborne Dr
Yarmouth, ME 04096-5726 | (441) Jason Wentworth
42 Hammond St
Portland, ME 04101-2522 |
| (431) Mr. Salvatore Cento
2043 E 41 st St
Brooklyn, NY 11234-2904 | (442) Barbara Klie
26 Salmond St
Belfast, ME 04915-6110 |
| (432) Ms. Katina Colombotos
148 Cushman Rd
Bryant Pond, ME 04219-6701 | (443) Sheila Costello
1275 Upper Oak Hill Rd
Swanville, ME 04915-4217 |
| (433) Mr. Tony Medlin
2008 North St Scenic Highway
Baton Rouge, LA 70802 | (444) Patricia Judd
48 Ferry Rd
Orrington, ME 04474-3412 |
| (434) Mary Louise Haskell
71 Sunset Point Rd
Yarmouth, ME 04096-5931 | (445) Barbara D. Michael
Scarborough, ME 04074-8693 |
| (435) Jaremy Lynch
160 Allen Point Rd
Harpwell, ME 04079-3056 | (446) Julie Abbott
103 Ossipee Trl
Gorham, ME 04038-2086 |
| (436) Denise Pentilla
Port Rd
Kennebunk, ME 04043 | (447) Tia Simon
85 Barstow Rd
Gorham, ME 04038-2305 |
| (437) Matt Dubel
35 Blackstone St
Bangor, ME | (448) Beedy Parker*
Camden, ME 04843-1522 |

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- | | |
|--|--|
| (449) Eric Schwibs
80 Wescott Rd
Gorham, ME 04038-2331 | (461) Anne Perry
25 Cedar Farm
Harpwell, Me 04079-4320 |
| (450) Annie Colaluca
Waterville, ME | (462) Emmie Theberge
67 Second St. Apt 2
Hallowell, ME 04347-1405 |
| (451) Kevin O'Kendley
PO Box 172
Winterport, ME 04496-0172 | (463) Beth Dimond
9B Antietam St.
Brunswick, ME 04011-2763 |
| (452) Elizabeth C. Hays
57 Demariano Rd
Mount Vernon, ME 04352-3017 | (464) Judy Berk
232 Beech Hills Rd
Northport, ME 04849-3208 |
| (453) Jane Dineen*
172 Main St.
Lovell, ME 04051-4111 | (465) Kate Harris
7 Union St. Apt B
Belfast, ME 04915-6800 |
| (454) Andrew Colvin
152 Virginia St.
Portland, ME 04103 | (466) Mr. Kendall Sawyer
91 High St.
Wilton, ME 04294 |
| (455) Jenny Rottmann
152 Virginia St.
Portland, ME 04103 | (467) Ms. Isabel Denham
20 Blueberry Ln Apt L106
Falmouth, ME 04105-2841 |
| (456) Robert Fritsch*
255 Upper Garland Rd.
Dexter, ME 04930-2680 | (468) Ms. Charlotte Walters
419 E. Lake Ave.
Baltimore, MD 21212-2544 |
| (457) Abi Morrison
20 Mill St.
Rockland, ME 04841-6310 | (469) Ms. Nancy Wright
PO Box 458
Norridgewock, ME 04957-0458 |
| (458) Rick Seeley
571 Cumberland Ave. Apt 12
Portland, ME 04101-2191 | (470) Ms. Marla Bottesch*
PO Box 458
Norridgewock, ME 04957-0458 |
| (459) James Melloh
Auburn, ME 04210-9100 | (471) Ms. Christina Rusnov
11 Bolduc Ave.
Winslow, ME 04901-7108 |
| (460) Susan Lauchlan, Maine | |

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Citizen Initiated Petition to Amend Rule Chapter 882
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Regulation of Bisphenol A in Children's Products

- | | |
|--|--|
| (472) Mr. Steven Ettelman
6 US Route 1
Scarborough, ME 04074-7161 | (483) Mr. Gordon Smith
21 Bodwell St
Brunswick, ME 04011-2801 |
| (473) Ms. Virginia Wood*
4 Wiggins Pond Ln
Kennebunk, ME 04043-6701 | (484) Mrs. Donna Stimpson*
841 Union St
Bangor, ME 04401-3009 |
| (474) Rachelle Curran
46 Howard ST. #2
Portland, ME 04101 | (485) Ms. Charlotte Walters*
419 E Lake Ave
Baltimore, MD 21212-2544 |
| (475) Ms. Beth Peary*
24 Franklin Ter
S. Portland, ME 04106-2258 | (486) Ms. Lorraine Gauthier
PO Box 1119
Sabattus, ME 04280 |
| (476) Ms. Christine A. Detroy
43 Willow Grove Rd.
Brunswick, ME 04011-2965 | (487) Mr. Bob Lodato
80 Lawry Rd
Charleston, ME 04422-3147 |
| (477) Ms. Doreen Merrill
13 Stone St.
Brunswick, ME 04011-1515 | (488) Mr. Roger Green
PO Box 95
North Waterford, ME 04267-0095 |
| (478) Mr. David Boyer
23 Miller St.
Belfast, ME 04915-6807 | (489) Ms. Alicia Ogburn
5530 W. Girard Ave
Philadelphia, PA 19131-4230 |
| (479) Ms. Christa Cornell
619 Mere Point Rd
Brunswick, ME 04011-7728 | (490) Mrs. Suzanne Hedrick
68 Belvedere Rd
Nobleboro, ME 04555-8830 |
| (480) Ms. Anne Johnson
989 Deerwander Rd
Hollis Center, ME 04042-3611 | (491) Mr. Roger Fenn*
15 McLellan St.
Brunswick, ME 04011-2523 |
| (481) Ms. Susan Howe
33 Middle Rd.
Falmouth, ME 04105-1817 | (492) Ms. Susan Howe*
33 Middle Rd
Falmouth, ME 04105-1817 |
| (482) Mr. Douglas Dransfield
48 Richmond Ter
Cape Elizabeth, ME 04107-9530 | (493) Mr. Dick Atlee
PO Box 1510
Southwest Harbor, ME 04679-1510 |

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|--|---|
| (494) Ms. Karen D'Andrea
PO Box 4744
Portland, ME 04112-4744 | (505) Mr. David Boyer*
23 Miller St.
Belfast, ME 04915-6807 |
| (495) Mrs. Shirley Davis*
64 Gardner Rd.
Orono, ME 04473-3403 | (506) Kenneth S. Spierer, Portland |
| (496) Ms. Patricia Perrier
PO Box 10873
Portland, ME 04104-6873 | (507) Joan S. Leitzer, M.D., Portland |
| (497) Ms. Nancy C. Anderson
47 Sturdivant Rd
Cumberland Foreside, ME 04110 | (508) Francois J. Vallie, Lewiston |
| (498) Mrs. Katherine Barton
3 Gordons Ln
Cape Elizabeth, ME 04107-1641 | (509) Laura Garsar, Portland |
| (499) Ms. Susanne Willard
Allen Ave.
Portland, ME 04103-3760 | (510) Polly McAdam, Bar Harbor |
| (500) Mrs. Artis Bernard
56 Mildred St.
South Portland, ME 04106-2727 | (511) Sophie Weaver, Waterville |
| (501) Dr. Carol Hubbard
14 Valley Rd.
Cape Elizabeth, ME 04107-9652 | (512) Jen Cote, South Portland |
| (502) Ms. Penny & Robert Morris*
366 Bull Ring Rd
Denmark, ME 04022-5314 | (513) Ashley Gorczyca, Portland |
| (503) Mr. Michael Angelone
20 Hillside Rd.
Portland, Me 04103-2204 | (514) Laura Devin, Newcastle |
| (504) Ms. Kathleen
163 Van Buren Rd.
Caribou, ME 04736-3567 | (515) Jacqueline Shurtleff, Troy |
| | (516) Caroline Carrigan, Topsham |
| | (517) Samantha Sewall, Camden |
| | (518) Margaret Huskey, Pownal |
| | (519) Katrina Venhuizen, Portland |
| | (520) Celange Beck, Rockport |
| | (521) Lindsay Cador, Roque Bluffs |
| | (522) Karen Kusiak, Fairfield |
| | (523) Bob Klotz, Jr., South Portland |
| | (524) Sarvi Maisaf, Cape Elizabeth |
| | (525) Stefan Apse, Portland |
| | (526) Megan Cullen, Belfast |
| | (527) Linda Jodrie, Kennebunk |
| | (528) Lisa Kelley, Freeport |
| | (529) Nancy Files, Blue Hill |
| | (530) Bill Chreighton, Freeport |
| | (531) Deirdre D. Barton, Arrowsic |
| | (532) Jennifer Pope, S. Freeport |
| | (533) Harriet Varney, Norridgewock |
| | (534) Hannah Converse, Hampden, MA |
| | (535) Laura Nobel, Brewer |
| | (536) Christine Fowler, Belfast |
| | (537) Nancy Ney-Colby, Kennebunk |
| | (538) Sally Trice, Portland |
| | (539) Mike Baribeau, Topsham |
| | (540) Deirdre Birbeck, Unity |
| | (541) Katherine Kalajainen, Brunswick |
| | (542) Mark Ancker, Industry |
| | (543) Marilyn Voorhies, West Tremont |
| | (544) Kimberley Converse, Hampden, MA |

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|---|--|
| (545) Julie Sorbo, Dixmont | (587) Amy Hill, Augusta |
| (546) A. Delaine Nye, Augusta | (588) Alberta Hunter, Eastport |
| (547) Colin Ayse, Portland | (589) Ruth C. Osborne, Old Town |
| (548) Patrick M. Nordman, Gorham | (590) Patricia Hunt, PhD |
| (549) Sandra & Ole Jaeger, Georgetown | (591) Deborah Rice, PhD |
| (550) Judith Winterling, Canaan | (592) Senator Thomas Saviello |
| (551) Catherine Webb, Pittston | (593) Jenny Carwile, M.P.H. |
| (552) Edward Bender, Portland | (594) Will Kletter |
| (553) Patricia Foden, Cape Elizabeth | (595) Dana Hernandez |
| (554) Margaret Terrill, Augusta | (596) Marina Schaufli, Camden |
| (555) Jane Livingston, Veazie | (597) Laurel Anderson, Hermon |
| (556) Ele, Thorndike | (598) Lalla Carothers, Cumberland |
| (557) Maureen Griffin, Surry | (599) Rachelle Michel, Lewiston |
| (558) Susan Lahti, Madison | (600) Pamela Bell, Milford |
| (559) Susan Mustapich, Rockland | (601) Louise Sharp, Bath |
| (560) Francene McClintock, Perham | (602) Gail Kass, Harpswell |
| (561) Eleanor Demmons, Rockport | (603) Melissa Anson, Scarborough |
| (562) Joanne Rosenthal, Brunswick | (604) Aura Russell-Bedder, Portland |
| (563) Megan McFarland, Bar Harbor | (605) Nilaya Palmer, Gorham |
| (564) Madeline Roberts, Orrington | (606) Susan Drucker, Bowdoinham |
| (565) A. vanZandeheyen, Falmouth | (607) Judith Jones, Brunswick |
| (566) Calvin Forbes, Orono | (608) Casey Goding, Union |
| (567) Alexandria Miller & Brittany Louper, Bar Harbor | (609) Jessica Graham |
| (568) Marianne & James Doyle, Warren | (610) Barbara McElgunn |
| (569) Marina Theberge, Atkinson | (611) 70 members of Maine Small Business Coalition |
| (570) Susan Mason, Nobleboro | (612) Sandra, Cort, Learning Disabilities of Maine |
| (571) Sellays, Portland | (613) Helen Ayotte |
| (572) Claire S. Ruthenburg, Portland | (614) Hannah Pingree |
| (573) Albert Curran, Gorham | |
| (574) Greg Korbet, Portland | |
| (575) Robert Johnson, Readfield | (615) Maine Medical Association |
| (576) Judith Hollard, Northport | Maine Chapter of American |
| (577) Jennifer Berry, Athens | Association of Pediatricians |
| (578) Amy Simpson, Portland | Maine Public Health Association |
| (579) Jeff Hefferon, Acton | Physicians for Social Responsibility |
| (580) Grandpa Mark, Parsonsfield | Maine Osteopathic Association |
| (581) Manela Whitaker, Newport News, VA | 116 Members |
| (582) Carol L. Curran, Gorham | |
| (583) Sandra B. Perkins, Buckfield | (616) Megan Rice |
| (584) Corinne Cronkite, Glenburn | (617) Tony Owens |
| (585) Anita L. Sellars, Durham | (618) Kathy Kilrain del Rio |
| (586) Grace Bartlett, Bangor | |

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- (619) Megan Hannan, Director Public
Affairs for Planned Parenthood of
Northern New England
- (620) Maine Supports BPA-Free Food for
Children
- (621) Heather Spalding, Maine Organic
Farmers and Gardeners Association
- (622) Tracy Gregoire, Topsham
- (623) Jody Spear
- (624) Sierra Fletcher
Alliance for a Clean and Healthy
565 Congress St., Suite 204
Portland, ME 04101

*Please Note: Some commenters have
submitted more than one written
comment and, as a result, may be listed
more than once; multiples are noted by
an asterisk (*).*

COMMENTS

Safety & Health

1. Comment: Commenter highlights that there exists compelling scientific evidence for harm caused by environmentally-relevant exposures to bisphenol-A. Significant research shows that exposure to BPA at levels found in the environment and in humans interferes with many internal functions and causes a variety of adverse health outcomes. Given this large body of research on BPA's harm, the safety claim made by the chemical industry is based mostly on data from their own studies, which are of course funded by the people who have a vested interest in the continued use of BPA. It has been reported that as of the end of 2004 there were 104 independently-funded scientific studies on BPA, 90% of which showed low-dose harm and 11 industry-funded BPA studies none of which show low-dose harm. Commenter claims that the industry-funded studies follow Good Laboratory Practices "GLP" but that GLP specifies nothing about the quality of the research design or whether appropriate methods are used. Most academic and government funded studies are not GLP certified because they don't need to be. We also cannot dismiss evidence from animal studies as not indicative of harm to humans. We cannot ethically perform most of the animal studies we conduct in humans because it would mean deliberately exposing pregnant woman, fetuses, and children to harmful chemicals. Scientific consensus is clear for BPA to cause significant and irreversible harm to the most sensitive populations. The next logical step is to enact the petitioner's requested changes to the rule. (159)
2. Comment: Commenters support the elimination of BPA from food packaging intended for children under three years of age. BPA exposure has been shown to have neurological and neurobehavioral impacts at low doses and from exposure received in utero. Studies have linked BPA exposure to ADHD. Those with learning, attention, behavioral and development disabilities and their families face many challenges and costs. There are also costs to schools, communities, the healthcare system, and the State to ensure that appropriate services are available. It also leads to reduced workforce productivity, which generates large costs to the economy and personal finances. It is clear there are safer alternatives available to avoid exposure, and it is within the law for the Board to require that BPA be phased out of packaging. (612)
3. Comment: Commenter states that BPA exposure is often from the consumption of food and beverages that have been stored in packaging containing BPA. Studies show that BPA can be found in infant formula and baby food due to migration from the container. By minimizing a person's exposure to foods and drinks stored in cans or polycarbonate plastic containers (that contain BPA) the amount of BPA measured in urine samples is dramatically reduced. Commenter also critiques the "Teeguarden and colleagues" study from 2011 as being inconsistent with many other studies; and

distinguishes it because of the use of canned fruits and juices, which typically have lower levels of BPA as compared to other foods, because fruit cans are often lined with tin and not an epoxy resin. BPA levels in children are higher than in adults, and have been detected in infant formula and baby food, therefore, the commenter supports the prohibition on BPA packaging for infant formula, baby food and toddler food. (594)

4. Comment: Commenter is in the healthcare profession that advises pregnant women, women preparing to become pregnant and new parents about how to raise healthy babies. This cannot be done when the food and formula is contaminated with a toxic chemical like BPA. Commenter cites studies that show that BPA is linked to numerous health problems such as reproductive and behavioral health problems, developmental problems, increased hyperactivity and aggression, increased anxiety, poorer emotional control and inhibition, increase in premature births, small-for-age gestational babies, decreased anogenital distance in sons, lower fertility in men, increased risk for diabetes and obesity; and in adults decreased sperm count and quality, poorer sexual function, decreased sexual desire and decreased erection and orgasmic function. (619)
5. Comment: Commenter is concerned about the danger of BPA in food containers marketed to toddlers. The commenter would like to continue the effort started with the prohibition of BPA on sippy cups and baby bottles because BPA is a hormone disrupting chemical. BPA was developed 70 years ago as an estrogen replacement and causes behavioral problems, learning disabilities, early puberty and certain cancers. Parents purchasing food marked organic are assuming it is a healthy option, but the fact is that BPA is seeping into the baby and toddler food from the packaging. Safer alternatives are available. (598)
6. Comment: BPA alters the binding sites of vital pathways in the body. It has been shown to block hormonal receptors, as well as cardiac receptors. It is hard to provide a safe environment for the next generation when harmful products are added to basic consumer goods. The Board needs to remove BPA from baby and toddler food in order to nurture safe and healthy children. (605)
7. Comment: Commenter summarizes multiple studies that show that BPA has been shown to affect numerous health endpoints at particularly sensitive life cycle stages and beyond. Low doses of BPA during development have persistent effects on brain structure, function and behavior in rats and mice. Low dose experimental studies have shown that exposure during fetal life has had adverse effects such as altered locomotor and exploratory activity, anxiety, effects on learning, social and sexual behavior, and reductions in many aspects of maternal behavior. There have been actions both in the US and around the world to remove BPA from some or all food packaging, and food companies are replacing BPA in their products. The reference dose from experimental studies is much higher than the lowest dose where effects were seen in the Health Canada's Screening Risk Assessment. Prenatal exposure to BPA has been linked to subtle gender specific alterations in

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behavior among children. Other studies confirmed that pregnant women with higher concentrations of BPA in their urine had children that were more anxious and depressed with poorer emotional control. These results were seen more in girls than boys. Other studies have shown that there is ongoing exposure to BPA and that food is a direct and major exposure source of BPA. There has been some controversy between studies that used injection versus oral as the route to administer BPA; however in at least one study, the levels measured in rodents were identical regardless of the route of exposure. Current risk assessment methods are not appropriate to determine risk from hormonally-active substances. Good Laboratory Practices cannot be depended upon a criterion for selecting data for BPA studies, such as those relied upon by the FDA. The current debate on BPA is similar to the discourse on lead in gasoline in the 70's and 80's, which eventually was proven to be hazardous at low levels. Care needs to be taken to ensure that alternatives to BPA in packaging are safe and bisphenols should be avoided, as it is likely that all will have an effect on neurodevelopment. It is important for the Board to take action on the petition to prohibit the use of BPA in packaging for infant formula, baby food and toddler food. (610)

8. Comment: Commenter writes that the State of Maine has already made statements that infants can be exposed to BPA if the chemical is in infant formula packaging, and provides information to parents about how to reduce their child's exposure through the Maine Department of Health and Human Services guidance to parents regarding the use of infant formula on its WIC webpages, providing information on ways to reduce exposure to BPA. This information recommends that if infants are not breastfed that powdered infant formula that comes in containers that do not contain BPA are a preferred choice in order to avoid containers which may create an exposure to BPA. (13)
9. Comment: Commenter states there is mounting evidence that BPA is damaging to human health. It is not only linked to cancer and reproductive abnormalities, but to neurological disorders such as autism and aggression and to the reprogramming of fat cells, leading to obesity. If federal regulations are inadequate, then policy changes are needed at the State level to stop food from being contaminated with BPA which leaches out of the plastic linings of metal cans, and the lids of glass jars. BPA needs to be banned from children's food altogether and studies by those with conflicts of interest such as the American Plastics Council, the American Chemical Council, the Harvard Center for Risk Analysis, and other industry front groups should not be considered trustworthy. (623)
10. Comment: Commenter represents an organization whose members are also parents. Commenter urges passage of the proposed amendments presented by petitioners. According to Maine CDC and many scientific studies, compelling evidence links low-dose BPA exposure to several harmful developmental changes in children. Commenter notes the costs for coping with preventable disease and disabilities is burdensome, with a significant portion of this burden carried by the school system. (74)

11. Comment: Commenter states there are thousands of published scientific studies on BPA which demonstrate that exposure occurring during fetal or early childhood development can have life-long impacts on reproduction, development, behavior, and chronic health, among other adverse health effects. Commenter states that conclusions must be drawn from an entire body of research which provides consistent and replicable findings. In the case of BPA, the commenter notes there are strong and consistent connections between studies performed which raise deep concerns about exposures and long term health impacts. Commenter states that voluntary measures to protect children from the harmful effects of BPA cannot be relied upon as effective. Whereas there are currently no comprehensive laws in the U.S. prohibiting the use of BPA in children's products, commenter states that Maine should not wait for the FDA to act and supports the elimination of BPA as proposed by the citizen's initiated petition. (17)
12. Comment: Commenter states that in the case of BPA the scientific evidence is clear, convincing and sufficient regarding its potential to cause adverse health effects. The problem of limited scientific studies proving adverse health effects is a classic problem as few of the thousands of chemicals in our environment are carefully studied before going into wide use. Even for chemicals that have an unequivocal record of harm to the health of humans, it is difficult to determine a safe level of exposure or the effects of any exposure, citing lessons learned after long term use of and exposure to tobacco, lead, and mercury. Commenter notes that it is unusual to have the strong evidence of adverse effects that has been collected on BPA. The link of "insufficient scientific evidence" argument is almost always linked to job loss. However, in the case of BPA, there are known safe and affordable alternatives. Commenter urges heeding the lessons of the past and an uncompromising regard for the health of the next generation. (12)
13. Comment: Commenter supports the sales prohibitions as requested by petitioners, referencing sufficient scientific evidence concluding that BPA is not safe. Commenter is concerned with preventable diseases directly attributed to toxic chemical exposures. While there is struggle to manage healthcare costs, commenter states that it is common sense to reduce exposure of our most vulnerable populations to the unintended impacts of hazardous chemicals. (615)
14. Comment: Commenter supports the petition to remove BPA from infant formula and baby food packaging. As a scientist that has studied BPA, the commenter states that there are extensive scientific studies that have shown that BPA is an endocrine disrupter that can adversely impact the development of the brain, heart, mammary gland, testis, ovaries and prostate. Commenter states controversy on the findings concerning the dangers of BPA are related to traditional concepts in toxicology. Toxicology testing is founded on basic principles established in the 1950's. One of them is that if a little is bad, more is worse. This model starts with testing at high doses, and works down to the lowest dose that gives an effect, thus giving one the level of exposure that is safe and the level that is bad. This method fails for chemicals that mimic or interfere with the actions of the

body's hormones. The FDA is used to traditional toxicology testing and continues to ignore other studies that utilize different methodologies. (590)

Response to comments #1-14: The chemical bisphenol A has already been designated as a priority chemical, which provides the Board and the Department with the authority to regulate products containing this chemical through the legal framework provided in law. A finding of potential hazards and harm resulting from exposure to BPA is not necessary for the Board to pursue adoption of a sales prohibition.

On the matter of exposure, the Board's review of the record concludes that considerable evidence exists which affirms the concern expressed by petitioners and commenters that exposure to BPA occurs when food packaged in containers containing BPA is consumed. Although laboratory analysis provides results showing a range of BPA concentrations within a variety of food types, which may be packaged in more than one type of container, the Board must only find that there is exposure to the priority chemical and that safer alternatives are available at comparable cost before adopting rules which prohibit the sale of a product which contains the priority chemical.

Alternatives

15. Comment: Commenter opposes the proposed rulemaking because of the inadequacy of the petitioner's discussion relative to alternative food packaging which, according to the commenter, may result in reduced food safety protection for Maine citizens. Commenter states that epoxy resin coatings on metal food packaging provide characteristics to the packaging which virtually eliminates the dangers of food poisoning from microbial contaminants. Epoxy coatings on metal packaging have an unprecedented safety record, there has not been a food-borne illness case resulting from the failure of metal packaging in over 35 years. That is zero failures resulting in a food-borne illness case with several trillions of cans produced and millions of families fed. Commenter states that the alternative packaging options provided by the petitioners cannot claim that same safety record and food safety must be the primary focus of policy. (9)
16. Comment: The citizen's initiated petition completely ignores the broader issues of food safety. Not a single proposed alternative provides the same level of food safety as the current metal lid used as closure on glass jars of baby food. Failure in cap seals with alternative structures can lead to contamination by various bacteria, including clostridium botulinum, whose toxin (botulism) will likely kill an infant prior to any successful lifesaving actions. (7)
17. Comment: Commenter states that careful consideration must be given to the limited level of information known about the materials migrating from the alternative options the petitioners offer.

Bisphenol A remains one of the most studied chemicals in the world and has been the subject of numerous evaluations and reevaluations within recent years by the FDA, Europe, Japan, New Zealand, Australia, and other food safety authorities. There should be careful consideration to clarify that a lack of extensive test data or information should not equate to a presumption of safety.
(9)

18. Comment: Commenter is concerned that the alternative packaging suggested by the petitioners as a replacement for cans does not necessarily work in all applications. There are a variety of manufacturing processes which use heat, packaging, food preparation, and sanitation; it is impractical to imply that a particular BPA alternative will work with all applications. The alternatives suggested may well jeopardize consumer safety because the performance characteristics have not been as thoroughly tested as BPA. (4)
19. Comment: There are several problems with the pouch offered as an acceptable alternative for the packaging of baby food purporting to be BPA free. Commenter states that it is a misnomer to say that the product or package is BPA Free. While it may be true that the packaging does not have intentionally added BPA ("BPA non-intent"), the processing procedure used to make baby foods may be a source of measurable concentrations of BPA in jarred baby foods tested. Additionally, commenter states that products packaged in alternative containers are predominantly fruit based and although may be labeled as vegetable and fruit will typically contain 70-90% fruit and offer little nutritional intake of vegetables. Lastly, commenter notes that the alternative packaging pouches claim the container is "environmentally friendly;" however, these containers are multilayered structures that cannot be recycled and end their useful life in a landfill. (7)
20. Comment: Commenter is a packaging manufacturer and asserts that aseptic packaging is an effective replacement for metal cans for applications related to infant formula, baby food, toddler food and kids' beverages. Commenter believes the aseptic packages in their product portfolio are well suited to such applications. These packages have a shelf life between six and 12 months, are BPA free and cost competitive. (3)
21. Commenter: There are safer alternatives to packaging containing BPA for infant formula, baby food and toddler food. Commenter lists aseptic packaging, injection molded polyethylene terephthalate, injection molded polyethylene or polypropylene, and injection molded polylactic acid PLA and explains a little about the packaging. Commenter does provide that there are challenges to determining if these are truly safer because information on the chemistry of alternatives is not readily available and material safety data sheets are not available to anyone other than supply chain members. (10)

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22. Comment: Commenter is aware of at least one alternative structure that uses melamine rather than BPA within their closure system. This chemical alternative is the same substance that caused several infant deaths and sickness and harmed thousands of pets. Commenter states that there is no known alternative assessment report performed on this chemical used in this manner. (7)

Response to comments # 15-22: Maine law at 38 MRSA § 1696(1) provides the Board with authority to adopt rules prohibiting the manufacture, sale or distribution in the State of a children's product containing a priority chemical in an amount greater than de minimis level if the Board finds that one or more safer alternatives to the priority chemical are available at a comparable cost and that exposure to BPA occurs when metal lined with BPA containing epoxy is used as a food contact material. An alternative is considered safer if it does not pose the same or greater potential for harm to human health or the environment as the priority chemical. (06-096 CMR ch. 880 § 6(B)(2))

During the implementation of the Rule Chapter 882, the Department of Environmental Protection received information submitted by manufacturers on the use of BPA in infant formula and baby food packaging. A review of reported data shows that greater than 90% of the national market share of manufacturers producing infant formula and baby food has already ended their use of BPA in packaging materials. With this level of packaging substitution being performed, the use of alternative packaging which does not contain BPA is believed to be widely available and acceptable for use by this manufacturing sector.

Additionally, an alternatives assessment report prepared by TechLaw Inc. for the Department on packaging materials for infant formula and baby food was reviewed by the Board. The alternatives assessment report described packaging applications other than metal lined containers with BPA containing epoxy resins, which may be suitable for use by infant formula and/or baby food manufacturers. This report also describes materials used within alternative packaging, such as polypropylene, polyethylene, and aseptic cartons, citing that none of the alternative packaging options contain any of the chemicals currently listed on Maine's Chemicals of Concern List.. The alternatives assessment confirmed that while a chemical replacement for BPA is not currently known to be available, there are other types of packages available and appropriate for use by this food manufacturing sector. Therefore, using the presumption set forth in Rule Chapter 880, Section 6(B)(3)(a), it can be presumed that the alternative packaging suggested as options to replace the currently utilized materials with BPA containing epoxy meet the conditions of safer as provided for in statute and rule.

Although detailed cost information relative to alternative packaging is not contained in the record, information in the record shows that infant formula and baby food contained by alternative packaging are known to be available and for sale in the State. Given the level of substitution by manufacturers and the resulting availability of alternatives, it is logical to assume that the cost

differential for alternative packaging in these food categories, if any, is not unreasonable for the consumer. The Board therefore finds that alternatives to infant formula and baby food packaging containing BPA are available at comparable cost. In addition, using the presumption set forth in Chapter 880, Section 6(B)(3)(b), the Board presumes that alternatives are available because the alternatives are sold in the United States.

After a review of the information in the record, the Board determined the following criteria outlined in law, "one or more safer alternatives to the priority chemical are available at comparable cost," (38 MRSA § 1696(1)(B)) which must be met before enacting a sales prohibition is fulfilled, both for infant formula and baby food packaging.

23. Comment: Commenter states that Bisphenol A has been the subject of a lot of scientific studies, more than most other chemicals used, and certainly more than any possible BPA alternative - and these studies repeatedly show that current uses of BPA are safe. The science has been evaluated by government health bodies around the world, including the European Food Safety Authority, U.S. FDA, Canada, Australia, New Zealand, Japan and Germany. These authoritative bodies have performed full evaluations of risk and consider both hazard and inherent toxicity along with realistic exposure factors. Each of these authoritative bodies, including the United Nations - World Health Organization have evaluated the totality of the science, not just political toxicology or cherry-picked data, and concluded that current human exposures, including to children, do not present any health risks. Commenter is concerned that alternatives used to replace metal packaging used as containers for infant formula and baby food may not have the volume of scientific analysis that accompanies a review of BPA. Commenter notes, "nor is there any evidence that BPA alternatives would be more beneficial." Commenter is very concerned and opposes rulemaking which needlessly lists, bans or restricts BPA in food packaging, negatively impacting consumer confidence. A restriction such as this has the potential to put workers out of jobs in the state of Maine and elsewhere. (5)

Response: The alternatives analysis report provided by the Department of Environmental Protection (Department) shows that there are several currently available alternative types of packaging with constituents that are not associated with toxicity or adverse impacts to human health. Specifically, the alternatives assessment report referenced above states that none of the preferred alternative packages contain any chemicals currently listed on Maine's Chemicals of Concern List and may, therefore, be considered safer when compared to the priority chemical BPA when used as a food contact material. A finding of safety regarding the alternative packaging which could replace metal lined with epoxy resin, currently used to contain infant formula and baby food, has been based on a review of the criteria set forth in law. The Board is confident in this finding of safety regarding alternative packaging which is currently used to contain infant formula and baby food provided to consumers.

Definition of Toddler Food

24. Comment: Toddler food, as proposed by the petitioners, would have a wide impact and essentially encompasses all food and beverages, with the exception of alcoholic beverages. (9)
25. Comment: Commenter is concerned with the subjectivity of the proposed definitions for toddler food and intentionally added. Commenter specifically cites the difficulty in making a determination regarding intentionally marketed to and relying on popular television characters which appeal to a broad range of ages. (4)
26. Comment: Commenter states that it would be impossible and ineffective to define and limit the rule by defining toddler food as limited to product advertising aimed at children under the age of three only. An overlap in the age of the target audience should not disqualify a product from regulation as toddler food, otherwise a manufacturer could exempt itself from regulation by defining its target audience to include children older than three for every product made. The bright line definition should be whether children under the age of three are included in the target audience for a product, not that they are the exclusive audience. Commenter supports the adoption of the definition of toddler food as proposed in the petition. (20)
27. Comment: Commenter states that the definition for toddler food proposed by the petitioners is appropriate and enforceable because there is ample data to determine if a product is intentionally marketed to children under three years of age. Food companies utilize third-party licensed characters on their products to appeal to the young fans of these characters. Characters usually have a targeted age range; therefore if that range encompasses children under the age of three, then that product should be considered toddler food. (6)
28. Comment: Commenter claims that estimates show that while children under three do not have their own money, they influence a significant amount of family spending. By targeting products to children through the use of advertising, especially the use of 'brand licensing', products are sold through what is called the "nag factor." Infants and toddlers are consumers of electronic media and are especially susceptible to advertising. As soon as children learn to talk, they are requesting specific brands, and commercials can influence food preferences. By looking at the rating system for television programs featuring these characters, one can determine if children under three are a target market. The commenter states that given the evidence a product should be considered toddler food when it is advertised during a TV program whose target audience includes children under 3; it features a character from a media program whose target audience includes children under 3, including but not limited to television programs rated TV-Y and movies rated G; and it features a character whose image is used to market other products aimed at children under 3, including but not

limited to diapers, bibs, onesies, as well as toys designed for infants and toddlers. Commenter states that the advertising agencies and corporate marketing departments possess knowledge of child development and research techniques designed to appeal to young children specifically. Electronic media has long been a primary vehicle for targeting children with marketing, and cultivating a young demographic to have lifelong brand loyalty is a driving force behind advertising campaigns. (21)

Response to comments 24-28: The Commissioner did not adopt the proposed definition of toddler food, and the Board did not adopt a sales prohibition on the toddler food category because the law at 38 MRSA § 1697(8) states that food and beverage packaging is exempt from the requirements of these regulations unless the product is intentionally marketed to or intended for the use of children under three years of age. The amendments, as proposed by the petitioners, for the toddler food category were not sufficiently clear to provide the regulated community with fair notice of whether or not they are subject to the regulation, and did not provide the Department with a clear definition that can be enforced equitably. Many of the products that would be captured under the petitioners' definition of toddler food are not clearly identifiable as intentionally marketed to or intended for use by children under three years of age. These products are often products that are marketed to and intended for use by a variable age range which is not limited to children 3 years old or younger.

Definition of Intentionally Added

29. Comment: Commenter supports the proposed changes to Section 5 of the rule to incorporate modified language for "intentionally-added". Commenter states that the determination of whether BPA is "intentionally added" or is a "contaminant" is critical to the success of the proposed rule, since most exposures to BPA are below the 100 ppm level. Commenter claims that industry argues that it has the sole authority to determine when a chemical is added intentionally or when it is present as a contaminant. However, BPA is a major component of epoxy resin specifically added to impart performance characteristics. In 2010 the Board's decision to authorize manufacturers to report the amount of epoxy resin or polycarbonate plastic as a percent by weight rather than obligate them to perform expensive testing to measure BPA levels highlights the determination that BPA is a known base monomer for both polycarbonate and epoxy resin. Furthermore, Maine law differs from Washington State law by design. For instance, the Maine DEP choose not to adopt a definition of contaminant when amending the Department's Rule Chapter 880 during the year 2012. Commenter notes that in order to determine the applicable de minimis level, both statute and rule first require a determination of intentionally added. Commenter asks the Board to find that when BPA is added to epoxy resin used to line metal food packaging it is intentionally added to provide a specific characteristic, appearance or quality or to perform a specific function, and therefore the de minimis level for purposes of the proposed rule is the practical quantification limit. Petitioners' proposed amendments to rule are needed to prevent industry from continuing to claim that they are exempt

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from regulation under the theory that BPA is present only as a contaminant. Commenter notes that DEP staff has wasted its limited resources on enforcement actions that could have been avoided by better defining intentionally added, as proposed by the petition. The Board and/or Commissioner should close the contaminant loophole used by industry to avoid regulation by this rule and adopt petitioners' proposed changes to Rule Chapter 882, Section 5(A). (20)

30. Comment: Commenter points out that Chapter 880 already defines intentionally-added, and the use of bisphenol A to make polycarbonate plastic or epoxy resins fails to satisfy this definition. Bisphenol A is a raw material that undergoes a chemical reaction with one or more other chemicals to produce the plastic or resin. Epoxy resins are further mixed with additional chemicals and undergo a second chemical reaction which cures, or crosslinks, the resin at the point of use to form a finished product. As a result of the chemical reactions that form polycarbonate plastic and epoxy resins, these materials, as sold in finished form, contain only trace levels of residual bisphenol A. The level of bisphenol A that is carried over to consumer products from these materials is typically in the low part per million range, this residual bisphenol A is not intentionally added to consumer products and serves no functional purpose in consumer products. Commenter points out that the level of residual bisphenol A is controlled at very low levels in the manufacturing process to avoid detrimental effects on product performance. These trace residual levels of bisphenol A do not meet the substantive requirements of the definition for intentionally added. Commenter notes that bisphenol A has been designated as a priority chemical, but neither polycarbonate plastic nor epoxy resins have been designated as such. The term "product" does not refer to raw materials that are produced upstream from the manufacture of products covered by Chapter 880. As a result, it is impossible for BPA to provide the specific functions that are provided by polycarbonate plastic and epoxy resins. Commenter requests that the Commissioner reject petitioner's request to redefine "intentionally-added" as the suggested amendment disregards both the statutory and regulatory definition already codified in law and rule. Commenter notes the differing authority provided to the Board of Environmental Protection, which includes major substantive rulemaking, and that of the Department of Environmental Protection, which includes routine technical rule making. Petitioners' request to redefine "intentionally-added" clearly is a routine technical matter for the Department's consideration. Changes requested by the petitioners redefining "intentionally-added" do not fit into the narrow instances of this law which call for major substantive rulemaking and must therefore be considered routine technical rulemaking within the purview of the Department. To determine otherwise would completely thwart the Legislature's intent that the Board of Environmental Protection's consideration of regulations be the exception rather than the rule. (19)
31. Comment: Commenter states that the Board has already determined that BPA is intentionally added to polycarbonate plastic and epoxy resin used as a product component in food packaging. The commenter notes that a request was issued to the Commissioner to issue regulatory guidance to manufacturers because of the uncertainty surrounding interpretation of contaminant and because of

the poor compliance record associated with BPA reporting requirements. Commenter states that BPA is used to make epoxy resin because of the resulting performance attributes it provides, which means that BPA meets the statutory definition of a priority chemical that has been intentionally added to a product component and not a contaminant. (15)

32. Comment: Commenter provides technical information that BPA makes up about 67% of the epoxy resin molecule known as BADGE on a molecular weight basis. BPA is intentionally added to the manufacturing process for epoxy resin to provide specific characteristics to the coating of metal cans and lids used for food packaging. Manufacturers have not publicly disclosed the specific chemistry of the BPA-free coatings for metal cans and lids. Without detailed information on the chemical constituents of the coatings, it is not possible to complete a comparative chemical hazard assessment of the various coatings for metal packaging. There are several non-metal packaging alternatives that are demonstrably safer than BPA and are commercially available at comparable cost. Commenter notes that there is insufficient data available to determine the extent to which one or both mechanisms explain the means by which BPA migrates from the epoxy resin linings to the food contained by the metal packaging. (10)
33. Comment: Commenter opposes the designation of bisphenol-A as “intentionally-added” to polycarbonate plastic since this issue has already been addressed in the existing language of Chapter 880. The proposed language regarding “intentionally-added” at the end of Section 5 of the proposed Chapter 882 rule amendments as written in the Petition is flawed and inconsistent with the definitions section of Chapter 882 itself, as well as the definitions section of Chapter 880. The commenter notes that the Petition is also flawed because the discussion of “intentionally added” is presented at the end of the proposed new language for Chapter 882 Section 5 and is not included in the “Definitions” section (Section 2) of Chapter 882. Whereas this proposed language is not included as a definition it adds confusion and should be rejected. Additionally, the commenter notes that only the actual manufacturer of a product will know if a chemical serves an intentionally-added purpose or function, or if it is a contaminant in their product. Commenter is also concerned that the proposed language includes, “including but not limited to” which is open ended and ambiguous, providing further uncertainty. Unreasonably vague language would undermine the intent of statutory revisions contained in Public Law Chapter 319. Commenter also notes that consistency with other state laws was the original basis of discussions during stakeholder meetings when language was originally crafted for Maine’s law. Consistency with the state of Washington is urged by the commenter in order to promote thorough and effective analysis of reporting compliance and effective utilization of limited state resources. (1)

Response comments 29-33: The Commissioner considers the definition of intentionally added provided in law (38 MRSA § 1691(9-A)) and agreed upon by the Legislature and adopted as part of

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the Department's Rule Chapter 880, to be adequate in administering the rule. The proposed change was not adopted.

Federal Authority/Federal Regulations

34. Comment: Commenter states that it would be premature for the State of Maine to go beyond the federal regulations and notes that the U.S. FDA is, "... taking reasonable steps to reduce human exposure to BPA in the food supply." Following the lead by the U.S. FDA, food manufacturers are making progress in replacing BPA in the packaging process. Both consumer preference and market forces are providing change within the industry. (4)
35. Comment: Commenter supports State policy to ensure that even those manufacturers who have already stopped using BPA do not return to using it. The Infant Formula Council's September 17, 2012 letter to the FDA relative to the U.S. FDA abandonment of the rule allowing for the use of BPA in reusable food and beverage containers highlights commenters concern, the letter states, "not all infant formula manufacturers believe they have permanently 'abandoned' the use of packaging made using BPA." (13)
36. Comment: Commenter has long supported the FDA in its role to assess and manage food safety for the U.S. public. Recognizing that chemical safety issues are best addressed in concert with our federal partners, the commenter urges the Board and DEP to work with Federal programs as they lead efforts to answer questions and clarify uncertainties about bisphenol A. Until their assessment work is completed, regulatory action in Maine is unnecessary. (18)
37. Comment: Commenter suggests that the statutory authority on which Chapter 882 is based applies to "children's product" and questions whether the DEP possesses the legislative authority to regulate infant formula. Whereas statute defines children's product as a consumer product, commenter notes that this definition does not include food or beverage. Infant formula is defined by the FDA as a "food" and BPA, when present in a container of infant formula, is an additive to that food. In instances where the Maine legislature has referred to a "food additive" in legislation, it has adopted the definition in the Federal Food, Drug, and Cosmetic Act Title 22, Subtitle 2, Part 5, Ch 562-A, 2511. Commenter requests the DEP reexamine the grant of rulemaking authority given to it by the legislature, and reexamine whether that grant includes the authority to regulate infant formula and BPA in containers holding infant formula. Commenter believes it does not and requests leaving the regulation of food and food additives to others. (14)
38. Comment: Commenter notes that some of the products included within the scope of Maine's definitions for children's and consumer products are regulated by the U.S. Food and Drug

Administration. In particular, products that contact food are regulated by the U.S. FDA as "food additives." Polycarbonate plastic for food contact applications is specifically regulated by FDA under Title 21, Section 177.1580 and epoxy resin can coatings are specifically regulated by FDA Title 21, section 175.300. (19)

Response to comments 34-38: While the Board supports the ongoing efforts of regulatory agencies at the federal level which aim to further investigate the relationship between chemicals used in consumer products and potential adverse health effects, the State of Maine has the authority to take action which has, to date, not been advanced by the federal government. The Board finds that the statutory criteria necessary to adopt a sales prohibition have been met for the categories of infant formula and baby food packaging relative to the use of BPA in their packaging. In the absence of federal regulation, the Board finds it appropriate to employ the authority provided by Maine law to adopt a sales prohibition for infant formula and baby food packaging which contains BPA above de minimis levels.

Furthermore, 38 MRSA § 1697(8) states that packaging for food or beverage products are exempt from the requirements of the law unless that product is intentionally marketed or intended for use by children under 3 years of age. Infant formula and baby food packaging is intended for use by and marketed to children under the age of 3 years. 38 MRSA § 1697(8) shows clear Legislative intent for regulation of food and beverage packaging such as infant formula and baby food packaging. Although federal law does contain differing protocols on the regulation of food packaging, federal law does not preempt Maine from regulating food and beverage packaging in a manner that is consistent with the existing state law.

In response to the above comment concerning the definition of food additive, the Legislature did exempt from the definition of consumer product (38 MRSA § 1691(8)) a food or beverage or an additive to a food or beverage. The Legislature did not specifically define the term "additive" used under the definition of consumer product. The Board finds that to the extent that FDA considers BPA a food additive under FDA statutes and regulations, the Board is not required to follow FDA's lead. The fact that the Legislature elsewhere in Maine law pointed to the federal definition of food additive, in a law concerning preparation of livestock and poultry products for human consumption, does not mean that the federal definition applies to a state law governing Toxic Chemicals in Children's Products. Moreover, the Legislature in 38 MRSA § 1691(8) did refer to FDA regulation of drugs and biologics and packaging, yet did not refer to FDA regulation of food additives in that same section. This is evidence that the Legislature did not intend the FDA definition of food additive to apply.

Business Impact

39. Comment: Commenter notes that retailers are concerned that if Maine goes beyond the federal regulations, the large manufacturers will simply stop selling their products in Maine. Commenter states, "our Maine retailers would be put at a further competitive disadvantage if the products remain available in New Hampshire, but could not be sold in Maine." (4)
40. Comment: Commenters, as small business owners operating in Maine, support the removal of BPA from infant formula, baby food and toddler food packaging and requiring the use of safer alternatives. Commenters state that every consumer deserves a home free of toxic chemicals, and Maine business owners deserve the right to know that the products they are selling are safe. It is not a choice between good health and good business. Enacting a ban on BPA will reduce costs and liability, increase consumer confidence and protect health. (611)
41. Comment: Given the extensive movement already underway in the marketplace, regulating packaging containing BPA would not place an undue burden on businesses. In some instances business has been phasing out BPA from packaging faster than regulators. Regulatory actions taken in states across the country and worldwide have encouraged companies to transition to packaging that does not contain BPA. (594)
42. Comment: Commenter states that the APA requirement to submit an Economic Impact Statement if a proposed rule may have an adverse impact on small businesses is satisfied in this case for the same reasons as in the 2010 BPA rulemaking prohibiting sale of baby bottles and sippy cups containing BPA. As in 2010, no Maine businesses manufacture the products regulated under the rule, no Maine businesses or retailers testified at the public hearings in opposition to the proposed rule; and Petitioners are unaware of any Maine business that has alleged it will be adversely impacted by the proposed rule. Commenter states that the rule is not likely to adversely impact Maine businesses and urges adoption of the rule amendments as proposed. (20)
43. Comment: Commenter states concern that the unwarranted listing or restriction on food and beverage cans could greatly disrupt the manufacture of metal cans and significantly reduce the availability of food and beverage products in Maine, hindering consumer's ability to find nutritious, valuable and shelf-stable foods and beverages. Canned foods represent about 20% of unit sales for total edible categories and offer the lowest cost, most efficient means of delivering fruits and vegetables to the U.S. population. (5)
44. Comment: Commenter states that a cost-benefit analysis of this proposed rule would be particularly useful in informing both the Department and the Board of the impact of petitioners' request. Those speaking in support of the petition repeatedly stated their burden was simply to establish exposure

and the availability of safer alternatives. Supporters of the petition went out of their way to argue that harm is not relevant to the decision-making process. Commenter states that merely preventing exposure without a focus on harm may yield society no actual benefits while imposing great costs. The State should not expend precious resources trying to regulate exposure without consideration of actual harm. A cost-benefit analysis is vital to determining whether this petition is sound policy.

(19)

45. Comment: Commenter is a manufacturer of baby food and must pack the food product during "harvest" in order to obtain the best quality and pricing. Shelf life of these packaged products varies from 2 to 3 years; any change would take up to 3 years to flow through the inventory system. An alternative cap with acceptable performance would take time to insert into the manufacturing process. Commenter considers the option of ending sales in Maine, which could result in reducing the overall supply and price competitiveness in the marketplace. Commenter's products are typically sold at reduced prices (due to efficiencies in manufacturing and product focus rather than expenditure in advertising), and ending sales in Maine will result in fewer choices for parents and higher prices on baby food. (7)
46. Comment: A sales prohibition on infant formula, baby food, and certain toddler food packaging will place Maine as an outlier, causing disruption to the marketplace and confusion for Maine consumers. The global marketplace has an extensive regulatory system. To survive in today's complex grocery supply chain, consistent state to state regulatory systems which promote food safety is most beneficial. Many of the commenter's members are small business owners and have weathered an uncertain regulatory climate. Given the vagaries in the citizen initiated proposal, these same small businesses are left clamoring for answers and concerned about the unintended consequences. A product ban within these categories imposed on Maine manufacturers and grocery retailers short-cuts the ongoing assessments, imposes a new regulatory standard, will generate public confusion and marketplace uncertainty, and will most certainly lead to loss of market share. (18)

Response comments 39-46: The Board anticipates a sales prohibition with an effective date of March 1, 2014 will provide Maine retailers with sufficient time to review their inventory and ensure that all products available are compliant. Information provided to the Department as required by Rule Chapter 882 from regulated manufacturers has shown that nationally companies have already changed their process to utilize alternative packaging. In fact, over 90% of the national market share for infant formula and baby food now provide consumers with products packaged in containers that do not utilize BPA. Additionally, other states have implemented sales prohibitions on packaging of infant formula and baby food that contain BPA. Most major retailers have already moved away from packaging containing BPA and provide consumers with alternative options; therefore, Maine would not be an outlier causing disruption to the marketplace. The Board also finds sufficient evidence in the record that alternatives are available at comparable costs to the

consumer, such that a ban on infant formula and baby food packaging containing BPA would not create an unacceptable cost impact for consumers.

Citizens Petition and Rulemaking Process

47. Comment: Commenter states that the citizen's initiated petition is an effort to circumvent the original efforts of his business as a regulated manufacturer and the Maine DEP to collect and analyze pertinent data to determine the safeness of BPA. The submitted reporting information and alternatives analysis show a low level of concern for the current manufacturing process and structure and no feasible alternatives at this time. (7)
48. Comment: The petition circumvents the process that the Legislature and stakeholders agreed to. It appears the petition attempts to establish a precedent that is contrary to the consistency with the State of Washington, which the Legislature had sought with the amendments in 2011. The law calls for a scientific decision-making process between the DEP and the Maine CDC, and this petition would overrule this. The petitioners proposed definition for intentionally-added runs in direct conflict with the terms intentionally added and contaminant that LD 1129 referenced and made consistent with the State of Washington's law. (592)
49. Comment: Commenter describes an early version of LD 1129 containing language which would explicitly prohibit Maine citizens from expressing their right under the Maine Administrative Procedures Act to petition the DEP to initiate rulemaking under the Toxic Chemicals in Children's Products law. During stakeholder negotiations this language was rejected. Commenter characterizes industry as acting in bad faith by refusing to timely comply with the regulatory requirements established in rule, which necessitated the citizen initiated petition as an effort to bring manufacturers into compliance. Commenter states that the citizen's initiated petition is the next logical step in the process of bringing manufactures into compliance that would otherwise cause further delay in the implementation of the program. (15)
50. Comment: Commenter expresses strong support of the proposed rule changes and believes that the mechanism of a citizen-initiated petition is important and entirely appropriate as an avenue for Maine people to bring forward issues which then become the responsibility of the agency and the Board to consider. The original language within LD 1129 reviewed by the Legislature in 2011 would have prohibited Maine citizens from petitioning their government to initiate rulemaking. The final language notably confirmed support of this process by protecting the right of Maine citizens to initiate rulemaking through a petition. The petitioner's suggested changes to Chapter 882 have come before the Board through an appropriate process that is protected by Maine law. (16)

51. Comment: Commenter asserts that the Citizen's Petition goes around the scientific process already in place at the Department on such issues. The Citizen Petition is an unreasonable effort to both do an end-run around the process contemplated by the Legislature and to coerce the Department into pursuing rulemaking it is not mandated to do under the law. While the commenter appreciates that the Citizen's Petition is legally valid, this does not create the presumption that the ideas presented have merit and must be accepted. Commenter states that the Citizen's Petition subverts the science-based process at the Department and runs totally counter to a consultative stakeholder discussion where all interested parties have an equal voice in shaping policy. (1)

Response to comments 47-51: The Board recognizes the concerns expressed by some commenters regarding the process utilized by the citizen petitioners to initiate rule changes. The process of petitioning the Board to initiate major substantive rule changes is expressly provided to the citizens of Maine in law (38 MRSA § 1696(6) and 5 MRSA § 8055). Petitioners followed the process provided to them in law.

General Supporting Comments

52. Comment: Commenter supports the proposed changes to rule noting that BPA is now one of the highest volume chemicals used in the world with multiple avenues of exposure for adults and children. BPA has been linked to several adverse health issues and there is an overwhelming amount of scientific evidence indicating that food sold in cans and jars that contain BPA is not safe. Eleven states, several municipalities, Canada, and Europe have all taken steps to remove products made with BPA from the market. Whereas information about products is not readily available to consumers, we rely on our government to make sure that products are safe. Maine must act because the federal government is not protecting us from BPA. All necessary criteria have been met to implement a sales ban and commenter urges the BEP to do so. (158)
53. Comment: Commenter claims Maine joins 10 other U.S. states to require the phase-out of BPA in reusable bottles and sippy cups and two New England states have also addressed BPA in infant formula and baby food packaging. The U.S. FDA approved BPA under the "food additive" regulations that were in place more than 40 years ago, well before the latest scientific understanding of endocrine disrupting chemicals began to emerge. This older regulatory structure does not have a means of taking into account new scientific findings related to substances approved prior to the year 2000. In 2008 the National Toxicology Program found "some concern for effects...in fetuses, infants, and children at current human exposures to bisphenol A." In 2010, FDA made clear that it shares this concern. FDA changed their regulations to prohibit the use of BPA in baby bottles and sippy cups. This action was possible because the market had already abandoned the use of BPA in this product category. Today we are still waiting for what has now been years of public comment

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and scientific review to unfold. When states started passing policies to phase out BPA in baby bottles in 2009, just three years later the marketplace had changed enough for FDA to prohibit the use of BPA in these products on grounds of abandonment. Just as the FDA did not need to make any kind of safety determination to take that action, the Board does not need to make its own safety determination as BPA is already a priority chemical in Maine. The market changed for baby bottles and sippy cups, and this policy should be continued to protect children's food packaging as well. (624)

54. Comment: Commenter represents several members of Maine's small business community and strongly supports the proposed rule changes. Commenter states that every Maine consumer deserves a home that is free of toxic chemicals and every Maine business deserves the right to know that the products they use or sell are safe. (611)
55. Comment: Commenters believe in order to reduce children's exposure to BPA, the Board and DEP must require that BPA be replaced with safer alternatives in packaging for infant formula, baby food and toddler food. As a priority chemical, Maine has found, based on scientific evidence that BPA is harmful to children because it has adverse effects on growth, brain development, behavior, and causes early onset puberty, changes in sex hormones, male fertility, and/or immune function. It costs an estimated \$380 million each year in Maine to treat kids for a handful of preventable diseases directly attributed to toxic chemical exposures. As there is struggle to mitigate and manage healthcare costs, it is common sense to reduce exposure of vulnerable populations to the unintended impacts of hazardous chemicals. (615)
56. Comment: Commenter states that in the absence of real federal oversight, state action, like the options available in Maine law, are needed now more than ever to protect children and families. To do this, a ban on the sale of BPA in children's food and packaging is necessary. BPA has been linked to rising autism rates, childhood learning disabilities, diabetes and cancers. The law in Maine is a practical and precautionary approach to reduce exposure of children and other vulnerable populations to chemicals of high concern. The questions under the law are, is a child being exposed to BPA and are viable alternatives available? Data shows that there is exposure and there are alternatives. The Board needs to take action to remove BPA from packaging. (614)
57. Comment: No specific comment provided. List includes groups and organizations that support the proposed rule to replace BPA in packaging for infant formula, baby food and toddler food with safer alternatives. (620)
58. Comment: Commenter submits a summarized review of two published reports from the World Health Organization and the European Food Safety Authority, each regarding bisphenol A. Commenter notes that both reports express uncertainty regarding the safety of BPA and potential

adverse health effects from various levels of exposure to BPA. (11)

59. Comment: Commenter states that the Board has the power to keep BPA from becoming the next tobacco. The tobacco industry and lobbyists obscured the addictive nature of cigarettes and their correlation to heart and lung disease. The public was intentionally misled through a well-funded campaign. The way in which the science was discredited regarding the harmful effects from smoking is not unlike what is said about BPA. Based on the science showing the dangers of BPA, the Board should adopt the rule as proposed. (617)
60. Comment: Commenters support the sales prohibition on infant formula, baby food and toddler food packaging because of the overwhelming evidence in animal models that show adverse effects produced by BPA exposure, and mounting evidence showing effects in humans. Scientific studies have shown that BPA is an endocrine disrupting chemical that mimics estrogen. This affects multiple organ systems and functions, including fertility and the development of the reproductive system, development of the mammary and prostate glands, control of various metabolic processes, and brain development and behavior. BPA exposure to the general population is ubiquitous, but there is strong evidence that food packaging is a major source of BPA exposure. (591)
61. Comment: There is extensive evidence that BPA has harmful effect at low doses. There are numerous studies on the association between exposure to BPA and effects on humans. BPA exposure is associated with an increase in premature births and small-for-gestational-age babies, changes in hormone levels in newborns, and anatomical and behavioral indicators in newborns and young children that BPA interferes with the normal action of reproductive hormones. It has also been linked to heart disease and obesity. The documented adverse effects are consistent in multiple studies. A ban on infant formula, baby food and toddler food is a logical extension of the ban in baby bottles, sippy cups and reusable plastic containers that was approved in 2010. (592)
62. Comment: Commenter supports the petition to phase out BPA from baby and toddler food packaging. It poses a hazard to public health. There are many toxins that threaten children's health, so it is critical to remove the easily controlled ones, such as BPA. (596)
63. Comment: BPA must be removed from baby and toddler food because it is an unnecessary toxic threat. BPA used to be used in dental sealants and now it is not generally used. Healthcare professionals understand that there are alternatives and they advocate for their patients. (607)
64. Comment: As a pregnant woman, commenter would like the safety of her unborn child put first in the eyes of companies still using BPA. (608)

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65. Comment: Commenter states that BPA alters the binding sites of vital pathways in the body. It has been shown to block hormonal receptors, as well as cardiac receptors. It is hard to provide a safe environment for the next generation when harmful products are added to basic consumer goods. The Board needs to remove BPA from baby and toddler food in order to nurture safe and healthy children. (605)
66. Comment: Commenter has a young daughter that she does everything she can to keep safe and healthy. She does not want to worry that the food that she is feeding her daughter is contaminated with the toxic chemical, BPA. Without state action this will be a constant worry. Personal responsibility is not enough because BPA is everywhere and can lead to learning disabilities, early onset of puberty, obesity and even cancer. The government has a responsibility to protect its citizens, and must do so by removing BPA from all baby and toddler food packaging. (613)
67. Comment: Commenters are mothers of young children. The fact that there is BPA in any baby and toddler food packaging is a burden on parents, because when purchasing these products it is not clear if the product contains BPA. Even spending a large amount of time researching the issue so as to not purchase products that will expose children to a hormone disrupting chemical is not 100% effective because there is so much information out there. Maine leaders should take this next step to protect children because the science is clear that BPA is dangerous, children are exposed to it and there are safer alternatives available. All manufacturers will not do this on their own. Children should not be guinea pigs. The tobacco industry spent years putting children in harm's way while denying the science, the chemical industry should not be able to do the same. (609)(616)
68. Comment: It is very important to remove BPA from baby and toddler food packaging because the health of children and future generations depends on removing this unnecessary chemical. Commenter states the Board must remove BPA from baby and toddler food packaging because it is irresponsible to take risks with children's long-term health. (597)
69. Comment: It is important that the Board remove this poisonous substance from baby and toddler food because commenter does not want it to enter the mouths of her grandchildren and great grandchild. As a past healthcare professional, the commenter worked and studied BPA and this is a dangerous chemical. (599)
70. Comment: Commenter used to make baby food for her children to avoid sugar, but now as a grandmother she is concerned about BPA in baby and toddler food packaging. The Board has the opportunity to do the right thing to remove this toxic substance from the food of babies and toddlers. There are more toxins in the food than necessary and BPA is one of the worst, and easiest to get rid of. (600)

71. Comment: As a person with chemical hypersensitivity, the commenter supports the proposal to phase out BPA from baby and toddler food packaging. The Board has knowledge of the toxicity of BPA. This substance should have never been allowed to be used in packaging of baby and toddler food without pre-testing and review by an environmental safety agency. The Board has the responsibility to correct this wrong. (601)
72. Comment: As a mother of a 14 year old girl, commenter sees children going through puberty at younger ages. As BPA is a hormone disrupter that leaches into children's food it is lethal, problematic and has many health risks. Her daughter has lobbied her middle school to phase out the use of plastic silverware and containers because she is worried about her future and how adults will leave the world for her to mend. Her daughter has done research on BPA and their whole family feels that the Board should remove BPA from baby and toddler food packaging. (602)
73. Comment: No specific comment provided. List includes groups and organizations that support the proposed rule to replace BPA in packaging for infant formula, baby food and toddler food with safer alternatives. (620)
74. Comment: BPA is a known hormone disrupter, and the state cannot wait for federal action. Parents should be able to shop without worrying that the products they purchase will cause developmental challenges. The Board should adopt the proposed changes to Chapter 882 to protect the health of Maine women and children. (618)
75. Comment: Commenter supports the citizens petition to require safer alternatives to BPA in food and beverage packaging for young children. From the soil to the dinner table, food should be free from toxic chemicals. The organization works hard to promote food production without chemicals, but the chemicals are still getting into bodies via exposure through food processing, packaging and preparation. BPA studies have shown that exposure in the womb, during infancy and through childhood can set the stage for lifelong adverse health effects. (621)
76. Comment: Commenter has a son with special needs that is overwhelmed by everyday sounds, sights and smells. While she may never know the cause of her son's challenges, she knows many studies have linked BPA exposure to learning and behavioral disabilities. If it is known BPA is toxic and it leaches into food and drink from the packaging that contains BPA, then BPA exposure is preventable. Commenter is counting on the Board and the Commissioner to get BPA out of food packaging for young children. (622)

Other Supporting Comments

Comment #77 is a consolidation of many comments received and can be attributed to multiple commenters as listed above:

77. Commenters #22-623 with the exception of those listed above, consist of members of the public, such as grandparents, parents, concerned citizens, healthcare professionals, business owners, and expecting parents who have provided similar opinions of support for the sales prohibitions on infant formula, baby food, and toddler food packaging containing BPA. While each individual comment is given equal weight in the review of the record, due to their similar nature these comments have been consolidated below.

- BPA is an endocrine disruptor that has been linked to a variety of health issues including certain cancers, reproductive system problems, birth defects and even obesity.
- BPA has also been linked to a lifetime of learning disabilities and behavioral issues.
- BPA migrates from food packaging into the food product and is consumed by infants, babies, and toddlers.
- Commenters feel this is not a political issue and the interests of citizens need to be put ahead of profits and politics.
- Commenters note the expense and time necessary to research and find food products in packaging that does not contain BPA.
- This rulemaking is important to protect the health and safety of Maine children.
- The Board has a duty to protect Maine's children from this chemical.
- It has already been determined that BPA is harmful.
- Multiple commenters cite examples of a lack of regulatory action on past products that were later deemed harmful or dangerous but where science was ignored for many years. Board action is urged so that BPA does not become the next tobacco.

Response to comments #52-77: BPA was designated a priority chemical effective January 2011, which recognizes its potential adverse health effects. Therefore, additional investigation of health effects is unnecessary for this rulemaking. Based on the record and statutory criteria the Board did adopt a sales prohibition on infant formula and baby food packaging containing BPA. The record showed that children under three years of age are exposed to the priority chemical, BPA, from the infant formula and baby food packaging and that there are safer alternatives available at a comparable cost to the consumer. However, the Board did not adopt a prohibition on the proposed toddler food category packaging, because the Board felt that there was not a clear way to identify

what constituted toddler food, and the law limits the regulation of food packaging to those products that are intentionally marketed to or intended for the use of children under three years of age.

General Against

78. Comment: Commenter produces and sells organic baby food under various labels owned by this manufacturer's customers. Commenter's food is made from fresh fruits and vegetables, unlike competitors who typically use food purchased in the processed, pureed form. This processed material is typically stored in 3 gallon, 5 gallon, 55 gallon, and 2500 gallon containers made from plastics. It is likely that these plastic containers have some level of BPA. Commenter notes that while there are credible, scientific studies showing the safety of BPA, it is inconsistent and disingenuous that the advocates of banning BPA in the closure system of glass jars do not also take into account other sources of BPA, particularly those used by baby food manufacturers using alternative structures/packaging. (7)

Response: While there is a considerable body of evidence showing measured concentrations of BPA in food packaged in containers lined with epoxy resins, there is also recognition that there are variables associated with the possible source of these measurable concentrations. However, the Board finds that the body of evidence provided in the record for this rulemaking supports a finding that the epoxy lining and the packaging process are sources of measured concentrations of BPA in the food held within glass jars with metal closures lined with BPA containing epoxy resins. The record highlights temperature, time, and contact area as possible factors in the level of concentrations measured within the food itself. Commenter's suggestion that there may be additional sources of BPA which contaminate the food product is a consideration for additional discussion, but does not affect the positive finding made by the Board to move forward with a sales prohibition for the category of baby food packaging which contains BPA above the de minimis level.

79. Comment: Commenter is opposed to the citizen's petition and its effort to extend the scope of Chapter 882 to include a prohibition on infant formula containing BPA. Commenter notes that in March 2012 the FDA announced it would not regulate BPA because, "the scientific evidence at this time does not suggest that the very low levels of human exposure to BPA through the diet are unsafe...exposure to BPA through foods for infants is much less than had been previously believed..." Commenter cites a study by the National Center for Toxicological Research (NCTR) that found BPA exposure in human infants is "84 to 92 percent less than previously estimated." Other regulatory agencies and recent scientific studies continue to confirm that BPA is safe for use in food applications. Based on these regulatory and scientific conclusions, enacting a ban on infant formulas that contain BPA is unnecessary and not justified by science. Commenter urges rejection

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of the citizen's petition. (14)

80. Comment: Commenter states that the most important goal of Maine's food retailers and wholesalers is to ensure that the products they sell are safe. Food retailers and wholesalers have long supported a stronger FDA and have supported federal legislation requiring continued study, input from stakeholders, and clarity on potential health effects from BPA exposure. Commenter does not support efforts that undermine the FDA by ignoring its scientists' input further eroding American's confidence in food safety. (18)

Response to comments #79-80: The Legislature provided the Board with authority to regulate priority chemicals when designated as such by the Department. While federal regulation of toxic chemicals in consumer products is optimal to provide consistency between states, the absence of federal regulation does not prohibit the Board from adopting a sales prohibition in a manner that is consistent with Maine law. Bisphenol A became regulated by Maine law on the effective date of the Department's Rule Chapter 882 (January 2011), which designates BPA as a priority chemical. Categorizing this chemical compound as a priority chemical ensures that BPA has already gone through the rigors of criteria set forth by the Legislature associated with such a designation.

The Board finds that the statutory criteria necessary to adopt a sales prohibition have been met for the categories of infant formula and baby food packaging relative to the use of BPA in their packaging. In the absence of federal regulation, the Board finds it appropriate to employ the authority provided by Maine law to adopt a sales prohibition for infant formula and baby food packaging which contains BPA above de minimis levels.